

**BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554**

In the Matter of)	
)	CG Docket No. 02-278
Rules and Regulations Implementing the)	
Telephone Consumer Protection Act of 1991)	
)	
)	
Request for Clarification by CallAssistant, LC)	

CallAssistant, LC's Reply Comments

Filed November 30, 2012

CallAssistant, LC (CallAssistant), acting with counsel and pursuant to FCC Public Notice DA 12-1654, "Consumer And Governmental Affairs Bureau Seeks Comment On Request For Clarification From CallAssistant, LLC," hereby respectfully submits its reply comments regarding the applicability of the Telephone Consumer Protection Act¹ and the Commission's related rules² (collectively "TCPA") to Call Assistant's use of "Echo." Echo is a patented technology that allows a live operator to communicate with persons via telephone using recorded audio voice files (voice files).³ CallAssistant's Request for Clarification was originally submitted in 2010 in response to the Commission's Further Notice of Proposed Rulemaking in docket number 02-278.

¹ Codified as 47 U.S.C. § 227.

² 47 C.F.R. § 64.1200.

³ *Petition* at 1.

I. INTRODUCTION AND SUMMARY

Echo is state of the art technology that combines the benefits of complete live agent call control with automation of scripted response delivery. The technology was built to realize cost efficiencies made possible by well-trained agents being capable of handling multiple calls simultaneously while also facilitating full compliance with disclosure and other scripting requirements. Echo is not a prerecorded messaging platform, automated "robocall" system or a hardware solution that replaces live agent interaction with consumers. While rare and highly unusual in nature, there are times when a consumer will ask a question for which there is no voice file that is responsive. In such instances, the agent can interject with his or her own voice or select a response saying that they are not trained or authorized to address said concern and will transfer the call to a manager. A live agent interacts with the customer every second of every call that utilizes Echo.⁴ Unlike a robocall, where every call is exactly the same and has no human involvement, each call using Echo is different based on the customer responses and comments and the live agent's selection of appropriate audio file responses.

It is clear that Congress did not intend the TCPA's prerecorded message prohibitions to prohibit real time two-way communications with consumers via residential telephone lines. Congressional intent was to eliminate the nuisance of unsolicited robocalls, not to eliminate the advances and consumer protections available with the use of technology that still involves constant human interaction by live telemarketers. "Congress determined that...prerecorded messages cause greater harm to consumers' privacy than telephone solicitations by *live*

⁴ See CallAssistant Notice of Ex Parte Communication; CompliancePoint Attachment at 1.

telemarketing.”⁵ Additional factors weighing into Congress’ intent are included in CallAssistant’s Notice of Ex Parte Communication.⁶

CallAssistant files this Reply Comment to address a number of Comments submitted by individuals, the majority of whom are professional *pro se* litigants, which inaccurately describe CallAssistant’s Request and the attributes of Echo.

II. REPLY TO SPECIFIC COMMENTS

Comments submitted by several individuals use broad sweeping generalizations and comparisons to inaccurately describe Echo and CallAssistant’s Request. The majority of the inaccuracies surround the concept of what constitutes a robocall, that Echo is the system that was used by the Dove Foundation and the lack of understanding of the consumer protection benefits innate to Echo.

A. Echo Does not Place Robocalls or Deliver Prerecorded Messages

Echo does not "deliver" prerecorded messages; therefore, its use does not violate the TCPA.

The TCPA provides that:

It shall be unlawful for any person...to initiate any telephone call to any residential telephone line using an ***artificial or prerecorded voice to deliver a message*** without the express consent of the called party, unless the call is initiated for emergency purposes or is exempted by [the Commission].⁷

The Commission’s regulations further clarify that “no person or entity may...Initiate any telephone call to any residential line using ***an artificial or prerecorded voice to deliver a message*** without the prior express consent of the called party, unless[certain exemptions apply].”⁸ As detailed throughout CallAssistant’s Request for Clarification and its Notice of Ex

⁵ 18 FCC Rcd 14014 at ¶ 139 (emphasis added).

⁶ See CallAssistant Notice of Ex Parte Communication, Mac Murray, Petersen & Shuster Attachment at 2.

⁷ 47 USC § 227(b)(1)(B).

⁸ 47 CFR § 64.1200(a)(3) (emphasis added).

Parte Communication, Echo does not deliver an artificial or prerecorded message to the consumer. Voice files are delivered by a live agent who continuously interacts with the consumer, not an unattended computer. Fundamentally, Echo is distinguishable from an unlawful robocall because:

- The equipment does not initiate a prerecorded message. No communication is made with the consumer unless a live agent initiates a voice file or uses his/her own voice to speak.
- Two way communication exists with Echo. Unlike a prerecorded message, which is a one way communication with no opportunity to respond in real time, Echo involves constant human to human interaction throughout the duration of the call.

As such, the use of Echo to communicate with consumers does not violate the TCPA.

B. Echo is Not the System that was Used by the Dove Foundation

Two Comments assert that Echo was the technology used in unlawful calls placed by the Dove Foundation.⁹ Echo has never been used by the Dove Foundation. CallAssistant is familiar with the system described by the Commenters and agrees that such technology constitutes a prerecorded message system. Unlike Echo, however, that technology uses voice recognition software to determine how to communicate with the consumer. Based on the software's interpretation of the consumer's responses and silence, *the system triggers the playing of an audio voice file, not a live agent*. The conversation is only attended by a live operator for a fraction of the call. This is not how Echo functions. Echo will only play a voice file when prompted by a live agent. No "automatic" message is ever played. The delivery of a response is never delivered or initiated by a computer or other equipment. Additionally, the Dove system does not allow the live agent to respond to the called party with their own voice. Echo allows a live agent to respond using their own voice at any time. The Commenters' discussion regarding

⁹ See Royance Comment at 2 and Shields Comment at 1.

calls made by the Dove Foundation is a red herring because the calls did not use Echo and the technology used for such calls is fundamentally different than Echo.

In the Commenters' discussion of the Dove Foundation, they also reference Feature Films for Families (Feature Films) and its owner, Forest Baker, and imply that a relationship exists between them and CallAssistant.¹⁰ Neither Feature Films nor Forest Baker is affiliated with nor do they have any type of ownership or management interest in CallAssistant. All information contained in Comments regarding Feature Films and Mr. Baker is inaccurate and irrelevant to CallAssistant's Request.

One Commenter generically states, when discussing an encounter with a system that was not Echo, that he could not identify the calling party, make a DNC request or make sense of the responses.¹¹ As more fully discussed in CallAssistant's Notice of Ex Parte Communication, Echo systematically allows and/or requires all of these functions.¹²

Another Commenter states that when Echo is used, the called party is not speaking with a live person.¹³ The essence of Echo is that a live person is in complete control of the conversation and what is said to the called party. An appropriate analogy is that the use of Echo by a live agent is the same as the use of a speech generating device by a voice impaired person. The consumer is speaking to and communicating with a live person in both instances.

Another Commenter states that simply because a prerecorded message is delivered while monitored by a live agent does not diminish the fact that a prerecorded message is delivered.¹⁴ CallAssistant would agree with this comment; however, Echo requires that the call be connected

¹⁰ See Royance Comment at 2.

¹¹ See Connor Comment at 1.

¹² See *CallAssistant Notice of Ex Parte Communication*, CompliancePoint Attachment at 2-11.

¹³ See Connor Comment at 1.

¹⁴ See Shields Comment at 1.

to a live agent and that the live agent initiate all responses. The agent is actively involved in every aspect of the communication and is not merely "monitoring" the call.

C. Echo's Consumer Protection Benefits

Echo has many consumer protection benefits and efficiencies, none of which impinge of the consumer protection rights articulated in the TCPA. The following list of benefits and efficiencies are highlights of what has been articulated in other Comments filed with the Commission:

- Echo prompts the agent to select all required federal and state disclosure statements, thereby eliminating the possibility of human error leading to non-compliant calls.¹⁵
- Echo uses proprietary software to manage required federal, state and internal Do Not Call list scrubbing, as well as wireless telephone number scrubbing.¹⁶
- Echo ensures that all client specific and sales authorization disclosures are made because the system runs on the premise of strict script adherence.¹⁷
- A consumer can place an entity specific DNC request at any time during a call.¹⁸
- The technology allows communications with consumers that are devoid of rude, irate or incorrect agent interactions.¹⁹
- The technology allows individuals that may have difficulty speaking (e.g. a speech impediment or handicap) to work effectively in a position that he or she would otherwise be unable to perform.²⁰

Echo is a system that allows all of the personal communications attributes of a human in a consistent voice and manner that ensures, to the greatest extent possible, that every call is delivered in full compliance with federal and state laws. This is in sharp contrast to robocalls, which replace human interaction with a completely automated process.

¹⁵ See *Id.* CompliancePoint Attachment at 7.

¹⁶ See *Id.* at 2-4.

¹⁷ See *Id.* at 8.

¹⁸ See Sponsler Comment at 1.

¹⁹ See *Id.*

²⁰ See *Id.* Notice of Ex Parte Communication at 1.

III. CONCLUSION

For all of the aforementioned reasons, the FCC should grant the clarification requested by CallAssistant. The Commission should make it clear that calls placed using audio files, in which human interaction is constant throughout the entirety of the call, do not violate the TCPA.

Pursuant to 47 C.F.R. § 1.1206(b), the undersigned files this notice electronically in the above referenced docket.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Michele Shuster", written in a cursive style.

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